

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

**JOHN ELMY, individually and on behalf of all other
similarly situated persons,**

Plaintiffs,

v.

**WESTERN EXPRESS, INC., NEW HORIZONS
LEASING, INC., and JOHN DOES 1-5,**

Defendants.

CIVIL NO. 3:17-cv-01199

**JUDGE CAMPBELL
MAGISTRATE FRENSELY**

**PLAINTIFFS' MOTION TO CONDITIONALLY CERTIFY A FAIR LABOR
STANDARDS ACT COLLECTIVE ACTION AND AUTHORIZE NOTICE TO BE
ISSUED TO THE CLASS**

Comes now Plaintiff John Elmy, individually and on behalf of all other similarly situated persons, by and through the undersigned counsel of record, and moves this Honorable Court for an Order conditionally certifying the Plaintiff's minimum wage claims as a collective action under 29 U.S.C. § 216(b) of the Fair Labor Standards Act (FLSA), and to authorize that notice of the action be issued to putative collective action members and for other miscellaneous relief to effectuate the mailing, emailing, and Qualcomm messaging of notice to putative collective action members.

This motion is predicated upon the following grounds:

- (1) The FLSA is a remedial statute enacted to protect workers from substandard wages and oppressive working hours;
- (2) The FLSA provides for representative actions of "similarly situated" employees;
- (3) The Plaintiff has met his modest burden of showing that he and putative collective action members are similarly situated;

- (4) This Court has the discretion to facilitate notice to potential plaintiffs of their right to opt into the action and such notice comports with the broad remedial purpose of the FLSA:
- (5) The Plaintiff's proposed methods of notice are appropriate and effective, given that notice under the FLSA is intended to inform as many potential plaintiffs as possible of the collective action and their right to opt in.
- (6) The Plaintiff's proposed forms of notice are neutrally worded and informs potential collective action members of the collective action and right to opt in.

Accordingly, the Plaintiff respectfully request that this Court enter an Order:

- (1) Granting the Plaintiff's request to conditionally certify this collective action and to authorize notice to the putative class by first class mail, email and Qualcomm;
- (2) Directing the Defendants to provide in an electronic spreadsheet format such as Excel, the following information, each contained in a separate column: names, addresses, email addresses, and an employee number or unique identifier of the FLSA collective members;
- (3) Approving the Plaintiff's forms of notice, Qualcomm message/reminder and reminder postcard to putative FLSA collective members;
- (4) Directing the Defendants to supply to the Plaintiff the last four digits of the social security numbers of those FLSA collective members whose notice is returned as undeliverable;
- (5) Permitting Plaintiff's counsel to call any individual whose notice is returned as undeliverable for the purpose of obtaining a current address for re-mailing of the notice;

- (6) Authorizing Plaintiff's counsel to re-mail notices that are returned as undeliverable for those individuals counsel can find better addresses; and
- (7) Authorizing Plaintiff's counsel to mail and email reminder postcards and send via Qualcomm a reminder message 21 days before the expiration of the opt-in period to those putative FLSA collective members who have not opted in to the collective action at that point.

Respectfully Submitted,

/s/ Lesley Tse

Lesley Tse (*pro hac vice*)
Michael J.D. Sweeney (*pro hac vice*)
Getman, Sweeney & Dunn, PLLC
260 Fair Street
Kingston, New York 12401
Telephone: (845) 255-9370
Fax: (845) 255-8649
Email: ltse@getmansweeney.com

Justin L. Swidler, Esq. (*pro hac vice*)
Swartz Swidler, LLC
1101 Kings Hwy N., Ste 402
Cherry Hill, NJ 08034
Tel: (856) 685-7420
Fax: (856) 685-7417
Email: jswidler@swartz-legal.com

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2018, a copy of the foregoing document and any attachments were electronically filed with the Court and electronically served on the date reflected in the ECF system upon:

Mark E. Hunt
R. Eddie Wayland
King & Ballow Law Offices
315 Union Street Ste. 1100
Nashville, TN 37201
Phone: (615) 259-3456
Fax: (615) 726-5417

By: /s/ Lesley Tse
Lesley Tse